APPEAL NO. 022137
FILED SEPTEMBER 24, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on July 15, 2002. The hearing officer resolved the disputed issue by determining that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) corresponding to the sixth compensable quarter. On appeal, the claimant expresses disagreement with this determination. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

We affirm the hearing officer's decision.

The claimant attached several medical documents to her appeal. All but one of these documents was admitted into evidence at the hearing. In determining whether the hearing officer's decision is sufficiently supported by the evidence, we will generally not consider evidence that was not admitted at the hearing and is presented for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the report dated May 7, 2002, and will not consider it on appeal.

The hearing officer did not err in determining that the claimant is not entitled to SIBs corresponding to the sixth compensable quarter. Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBs if upon the expiration of the impairment income benefits (IIBs) period the employee has: (1) an impairment rating of at least 15%; (2) not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; (3) not elected to commute a portion of the IIBs; and (4) attempted in good faith to obtain employment commensurate with the employee's ability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §130.102(d)(4) (Rule 130.102(d)(4)) states that the "good faith" criterion will be met if the employee:

> has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

We have emphasized that a finding of no ability to work is a factual determination of the hearing officer which is subject to reversal on appeal only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Texas Workers' Compensation Commission Appeal No. 951204, decided September 6, 1995; Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no ground to reverse the decision of the hearing officer. The hearing officer's findings that there was no narrative complying with the requirements of Rule 130.102(d)(4) and that there are other records in evidence showing that the claimant had some ability to work during the qualifying period in question are sufficiently supported by the record. The claimant appears to perceive that she is entitled to SIBs simply because her treating doctor has not released her to work.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Philip F. O'Neill
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Robert W. Potts
Appeals Judge